

Laws and Regulations

Oregon-California Trails Association
Training Program
2005-2008

Federal Laws that Apply to Historic Trails

- **National Trails System Act (1968, as amended through December 2006)**

Provides trails designation/recognition, recreational opportunities; sets policy

- **National Historic Preservation Act (1966, as amended), **Section 106****

OCTA consults as an interested party, having specific knowledge and interest in trails

- **National Environmental Policy Act (1979)**

OCTA consults as public organization, and is given equal consideration with all other public concerns.

What Is Section 106?

Section 106 of the National Historic Preservation Act requires federal agencies to take into account the effects of their **undertakings** on historic properties, and afford the Advisory Council on Historic Preservation reasonable opportunity to comment.

(36CFR Part 800, January 11,2001)

What is an Undertaking?

An undertaking is a project, activity, or program that involves federal funding, permitting, license, approval, or is subject to State or local regulation administered pursuant to a delegation or approval by a federal agency

(36CFR Part 800.16(y))

Steps in the Section 106 Process

1. Identify historic properties
2. Assess effects of undertaking
3. Resolve adverse effects

What Are Historic Properties?

Historic properties are buildings, structures, objects, districts, or sites that have been determined eligible for listing in the National Register of Historic Places.

Determined eligible by whom?

What qualifies a historic trail for the National Register?

National Register Significance Criteria

The quality of significance in American history, architecture, archaeology, engineering, and culture is present in resources that are more than 50 years of age, that possess historic integrity, and

- A) That are associated with events that have made a significant contribution to the broad patterns of our history; or
- B) That are associated with the lives of persons significant in our past; or
- C) That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- D) That have yielded, or may be likely to yield, information important in prehistory or history.

Significance + Historic Integrity

A cultural resource(s) that meets one or more of the National Register criteria (a—d),

AND possesses integrity of location, design, setting, materials and workmanship, and feeling and association (at least one variable must apply),

= A HISTORIC PROPERTY, ELIGIBLE FOR LISTING IN THE NATIONAL REGISTER

Initiate consultation, define APE, and identify consulting parties

Step 2

Identify and evaluate historic properties

NO

YES

No NRHP-eligible properties identified

NRHP-eligible properties identified

Step 3

Assess adverse effects

NO

YES

No adverse effects identified

Adverse effects identified

Notify SHPO and other consulting parties

YES
DISAGREEMENT

ACHP consulted to resolve disagreement

YES
ADVERSE EFFECTS

Step 4

Consultation to resolve adverse effects

Execute MOA

NO DISAGREEMENT

NO ADVERSE EFFECTS

Proceed with undertaking

Figure 7
Basic Steps of Section 106 Review

Common Pitfalls for Trail Liaisons

- Initiate Section 106 process
- Identify historic properties
- Assess effects
- Resolve adverse effects
- **OCTA never consulted**
- **Trails are unidentified, misidentified, incorrectly evaluated**
- **“No effect” decision made incorrectly**
- **Mitigation inadequate**